IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 411

THOMAS T. KNOX, Petitioner

v.

THE AMERICAN INSURANCE COMPANY OF THE CITY OF NEWARK, NEW JERSEY, a corporation, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Thomas T. Keane, respectfully prays that a writ of certiorari issue in the above-captioned case to review the judgment of the United States Court of Appeals for the District of Columbia Circuit rendered January 26, 1956, (R. 119) and

Petition for Rehearing in Banc denied June 14, 1956. (R. 128).

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (Bailey, J.) appears at R. 11-13, and is not reported, The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported in 233 F. 2d 354. It appears in the record at R. 105-118.

JURISDICTION

The judgment of the court below was entered January 26, 1956. (R. 119). A Petition for Rehearing in Banc was denied June 14, 1956. (R. 128).

The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code, Title 28, U.S.C. § 1254.

QUESTIONS PRESENTED

1. In an action upon a marine insurance policy in a Federal court, where coverage of the insured depends upon the determination of the cause of the loss, construing the words "results from", under the applicable decisions of this Court, is such question a matter of law for the court to decide, or is it a question of fact conclusive on the court when decided by the verdict of a jury?

2. By deciding that the loss subject of the action in the district court resulted from the "operation of" the engines of petitioner's boat, contrary to the special verdict of the jury, has the court below denied to petitioner his right to the conclusiveness of the jury's verdict on questions of fact, guaranteed to him by the Seventh Amendment to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."—Constitution of the United States, Amendment VII.

STATEMENT OF THE CASE

The complaint of the petitioner (R. 1-8) was in four causes of action* all of which appealed to the Federal jurisdiction of the United States District Court for the District of Columbia by reason of diversity of citizenship, under Section 1332 of the Judicial Code, Title 28, U.S.C. § 1332.

The petitioner recovered judgment in the district court (R. 13-14) for $22,400.74, and interest, upon a special verdict of a jury (R. 102) against respondent insurance company. The action was upon a marine insurance policy, a facsimile copy of which appears in the record, following R. 104 and designated Plaintiff's Exhibit No. 1. As will be seen by examination of the policy, it has many causes more or less obscure to laymen. It purports to insure petitioner against loss or damage (a) to his racing boat, (b) for payments made by him for workmen's compensation, and (c) for payments made by him to others arising out of personal injury or death. The policy was on a standard form but was specially written in the underwriting department of the respondent's office (R. 75) where the disputed clauses hereafter referred to were inserted.

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* The third cause of action was withdrawn at trial. (R. 16).

On the first page of the policy appears the following typewritten words:

> "It is understood and agreed that this insurance is free from claim for loss or damage
>
> 1. During such time as the vessel's engine is operating.
>
> 2. Resulting from the operation of the vessel's engine whether caused by a peril insured against or not." (R. following 104)

During the policy period the petitioner had an accident with his boat, in a trial run preceding his planned participation in a race. By his own negligence, he missed a buoy, passing on the left instead of the right. As he turned his boat to return to his intended course, he saw in his way a small craft occupied by two persons. He cut off his engine, and turned his boat sharply. The boat went into a skid, and collided with the smaller craft. (R. 26-44). One of the occupants was killed and the other seriously injured. To settle the claims made therefor, petitioner was required to pay, and did pay, the sums for the recovery of which this suit is brought, besides fees and expenses and the damage to his own boat. (R. 22-3, 51-2). He had previously made a demand on respondent to undertake his defense, but had been refused. (R. 52).

With agreement of counsel for both parties, the trial court submitted to the jury two interrogatories:

1. When the "Miss Steaks" collided with the Century runabout, was the "Miss Steaks" engine operating?
2. Did the collision between the "Miss Steaks" and the Centnry runabout result from the operation of the engine of the "Miss Steaks"? (R. 102)

The answer of the jury to both these interrogatories was "No." (R. 102). After hearing argument upon the effect of the verdict and filing an opinion (R. 11-13), the trial judge entered judgment for petitioner for $22,400.74 and interest. (R. 13-14). On appeal the court, consisting of a division of three judges, reversed the judgment of the district court and directed entry of judgment for respondent, one judge dissenting. (R. 119). Thereafter, a Petition for Rehearing in Banc was denied, with five judges voting to deny, and four to grant. (R. 128).

The issue squarely presented in the trial court and in the court of appeals, both initially and on rehearing, was whether the cause of the petitioner's loss, within the meaning of the policy, was to be decided as a question of fact or as a question of law; and if the latter whether as a matter of law the policy excluded coverage if the loss occurred at any time that the boat was under momentum imparted by the engines. Petitioner argued that the issue was one of fact, and that the verdict of the jury was conclusive. Respondent argued that the issue was one of law and must be decided as such in respondent's favor. Petitioner consistently, in the trial court, and in the court of appeals, relied upon the decision of this Court in *Standard Oil Co.* v. *United States*, 340 U. S. 54, 71 S. Ct. 135, 95 L. ed. 68, as being conclusive of the matter.

REASONS FOR ALLOWANCE OF THE WRIT

This Court, in *Standard Oil Company* v. *United States*, 340 U. S. 54, 71 S. Ct. 135, 95 L. ed. 68, had before it, and decided, the precise question presented in the case at bar. There the sole question before the court was whether, *as a matter of law*, the provision of

a marine (war risk) insurance policy insuring against "all consequences of warlike operations" covered the loss resulting from collision between the vessel insured and a Navy minesweeper. This Court, six justices concurring, held unequivocably that the cause of the loss was one of fact and not of law, notwithstanding there was no dispute as to the physical and operating facts. The opinion of the majority of the Court, delivered by Mr. Justice Black, is absolutely clear that the court, despite strong persuasion to the contrary, has adopted a rule to be followed by the Federal courts, namely, that the question in these cases is one of fact, not one of law; and that, therefore, the conclusion of the trier of the facts (i.e., in the case at bar the jury) is finally and conclusively determinative.

It is interesting and important to note that the majority opinion of the court below dismissed the *Standard Oil* case, as one of a "line of cases", having to do with matters other than those involved in the case at bar. (R. 115). Notwithstanding that the opinion properly refers to the words "whether caused by a peril insured against or not" as not material to the issue, which is

> "what is critical is whether the claim was one 'resulting from' the operation of the racing boat's engine." (R. 115)

and notwithstanding that the court could

> "see no reason why the test of proximate cause should not be here applied." (R. 116)

the court concluded that

> "It is our duty so to rule as a matter of law where the language is clear and where the facts so unerringly bring the case within its compass."

There is nothing in the opinion of this Court in the *Standard Oil* case, *supra,* or in the dissenting opinions therein, to suggest that the policy of the decision is for some reason limited to war risk insurance cases. The language of the opinion seems most positively to indicate otherwise:

> "The proximate cause method of determining on the facts of each case whether a loss was the 'consequence' of warlike operations may fall short of achieving perfect results. For those insured and those insuring cannot predict with certainty what a trier of fact might decide is the predominant cause of loss. But neither could they predict with certainty what particular state of facts might cause a court to discover liability 'as a matter of law.' Long experience with the proximate cause method in American and English courts has at least proven it adaptable and useful in marine and other insurance cases. There is no reason to believe that its application in this case will disappoint the just expectations of insurer or insured." *Standard Oil Co.* v. *United States, supra,* 340 U.S. 61.

The case is not an isolated and unimportant one. It will be cited wherever there is presented the question whether in construing, in a marine, or other, insurance policy words such as "as a result of", "in consequence of", "resulting from", etc., the proximate cause method should be adopted, or whether some other test should be used. See such cases as *Bull* v. *Sun Life Assur. Co.,* 141 F. 2d 456; *Princess Garment Co.* v. *Firemen's Fund Ins. Co.,* 115 F. 2d 380; *Crozier* v. *Hawkeye Stages,* 209 Iowa 313, 228 N. W. 320; *Federal Life Ins. Co.* v. *White,* 23 S. W. 2d 832; and 2 Richards on Insurance, 5th Edition, § 270, 271.

The courts of the District of Columbia are Federal courts—certainly the Federal jurisdiction of the district court in cases of diversity of citizenship was expressly appealed to in the case at bar. There is no more reason why the courts of the District should not follow the decisions of the Supreme Court than those of any other circuit. There is a remarkable inconsistency between the treatment of petitioner's case and that by the same court in *Hanna* v. *Fletcher*, 231 F. 2d 469, 472, U. S. App. D. C. , where the majority opinion contains the following:

> "The view that the contractor may not be held liable to tenants because the proximate cause of injury is not his negligence but that of the owner in maintaining the premises, turns upon a question of fact, not of law. The cause must be decided on the facts not by a legal fiction set up to bar a factual decision. As was said in Munsey v. Webb, 37 App. D. C. 185, 189, affirmed 231 U. S. 150, 34 S. Ct. 44, 58 L. ed. 162:
>
> "'* * *. 'The true rule is what is the proximate cause of an injury is ordinarily a question for the jury. It is not a question of science or of legal knowledge. It is to be determined as a fact, in view of the circumstances of fact attending it. * * * (the interior quotation is from Milwaukee & St. P.R. Co. v. Kellog, 94 U. S. 469, 474, 24 L. ed. 256.).'"

Therefore if, as petitioner contends, the court below has decided a question of fact already decided by a jury, the court has clearly deprived petitioner of his rights under the Seventh Amendment.

CONCLUSION

Your petitioner respectfully contends that the Court below erred in that it has failed to follow the decisions of this Court and has denied to petitioner his constitutional right to the finality of a trial by jury; and, therefore, prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all of the proceedings in the case numbered and entitled on its docket, No. 12636, *The American Insurance Company of the City of Newark, New Jersey*, appellant, vs. *Thomas T. Keane*, appellee, and that the judgment therein of said United States Court of Appeals for the District of Columbia Circuit be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Respectfully submitted,

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